

BOUTIN JONES INC.

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Receiver of Defendants Secure Investment Services, Inc.,
American Financial Services, Inc., and Lyndon Group, Inc.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA, SACRAMENTO DIVISION

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

v.

SECURE INVESTMENT SERVICES, INC.,
AMERICAN FINANCIAL SERVICES, INC.,
LYNDON GROUP, INC., DONALD F. NEUHAUS,
and KIMBERLY A. SNOWDEN,

Defendants.

Case No. 2:07-cv-01724 GEB CMK

**RECEIVER'S SIXTEENTH INTERIM
APPLICATION TO ALLOW AND PAY
ATTORNEY'S FEES AND EXPENSES
OF LOCAL COUNSEL AND BRIEF IN
SUPPORT**

Hearing Date: November 3, 2014
Time: 9:00 a.m.
Courtroom: 10

TO THE HONORABLE GARLAND E. BURRELL, JR., UNITED STATES DISTRICT
JUDGE:

Michael J. Quilling, Receiver, files this, his Sixteenth Interim Application to Allow and
Pay Attorneys' Fees and Expenses of Local Counsel, and in support of such would respectfully
show the Court as follows:

BACKGROUND

1. On or about August 22, 2007, the Securities and Exchange Commission filed its
Complaint and request for appointment of a receiver. On October 31, 2007, the Court issued its

1 Order Appointing Receiver pursuant to which Michael J. Quilling was appointed to serve as
 2 Receiver in this case.

3 2. Pursuant to the terms of the Order Appointing Receiver, the Receiver was
 4 authorized to employ such attorneys as is necessary and proper in connection with the claims
 5 process. Subsequent to his appointment, the Receiver employed the law firm of Boutin Jones
 6 Inc. ("BOUTIN") as his local counsel.

7 3. This Application seeks approval and payment of the fees and reimbursement of
 8 expenses for BOUTIN for the time period from November, 2013 through August, 2014 AND
 9 June, 2013¹.

10 4. Pursuant to paragraph 17 of the Order Appointing Receiver and after obtaining
 11 the consent of the SEC, the Receiver has paid BOUTIN 90% of their fees and 100% of their
 12 expenses. The purpose of this Application is to request Court approval of all of the fees and
 13 expenses and to allow payment of the 10% fee holdback.

14 5. During the period covered by this Application, the Receiver has incurred fees and
 15 expenses with respect to BOUTIN as to these proceedings on a monthly basis as follows:

Month	Fees	Expenses
June, 2013	37.50	-0-
November, 2013	1312.50	-0-
December, 2013	75.00	-0-
March, 2014	77.00	-0-
July, 2014	38.50	-0-
TOTAL	\$1,540.50	\$-0-

22 6. Exhibit "A," which is attached hereto and incorporated herein by reference for all
 23 purposes conveys the following information for the time period of November, 2013 through
 24 August, 2014 AND June, 2013: (a) the number of hours worked by each attorney and staff
 25 member on a particular day; (b) the manner and type of work performed by each attorney and
 26

27 ¹ The June 2013 services invoice was inadvertently omitted from Receiver's previous interim fee application for
 28 local counsel.

1 staff member; (c) the customary billing rate for each person rendering service in this matter; and
2 (d) the monetary value assigned to each task performed by a given attorney and/or staff member.
3 Each of the invoices attached hereto as Exhibit "A" reflect aggregate expenses by category
4 during a given month.

5 **JOHNSON FACTORS**

6 7. In support of this request for allowance of compensation and reimbursement of
7 expenses, the Receiver and BOUTIN respectfully direct this Court's attention to those factors
8 generally considered by courts in awarding compensation to professionals for services performed
9 in connection with the administration of a receivership estate. As stated by the Fifth Circuit
10 Court of Appeals in *Migis v. Pearle Vision, Inc.*, 135 F.3d 1041, 1047 (5th Cir. 1998), "The
11 calculation of attorneys fees involves a well-established process. First, the court calculates a
12 'lodestar' fee by multiplying the reasonable number of hours expended on the case by the
13 reasonable hourly rates for the participating lawyers. [citation omitted.] The court then
14 considers whether the lodestar figure should be adjusted upward or downward depending on the
15 circumstances of the case. In making a lodestar adjustment the court should look at twelve
16 factors, known as the Johnson factors, after *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d
17 714 (5th Cir. 1974)." The Ninth Circuit has expressly adopted the Johnson factors in *Kerr v.*
18 *Screen Extras Guild, Inc.*, 526 F.2d 67 (9th Cir. 1975); see also *Quesada v. Thomason*, 850 F.2d
19 537, 539 (9th Cir. 1988). Those factors, as applied to the services rendered in this case by
20 BOUTIN, are addressed below.

21 (a) The Time and Labor Required. The Receiver and BOUTIN respectfully refer the
22 Court's attention to Exhibit "A" which details the involvement of BOUTIN's attorneys in this
23 case during the thirteen month period covered by this Application during which a total of 4.1
24 hours of attorney time has been expended.

25 (b) The Novelty and Difficulty of the Questions. Many of the tasks reflected in
26 Exhibit "A" involved factual and legal questions which were of substantial complexity.
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1 (c) The Skill Requisite to Perform the Service. The Receiver believes that the
2 services performed in this case have required individuals with experience in the U.S. District
3 Court, Eastern District of California. BOUTIN has considerable experience in this district.

4 (d) The Preclusion of Other Employment Due to Acceptance of the Case. BOUTIN
5 has not declined any representation solely because of their services as local counsel for the
6 Receiver.

7 (e) The Customary Fee. The Receiver believes that the hourly rates sought herein are
8 commensurate with or lower than the rates charged by other practitioners of similar experience
9 levels in the Eastern District of California. During the course of these proceedings, the following
10 lawyers at BOUTIN have performed legal services on behalf of the Receiver with respect to
11 these proceedings: Maralee Eriksen (\$375.00 during 2013; \$385.00 during 2014) licensed in
12 California since 2000 (previously licensed in Wyoming).

13 (f) Whether the Fee is Fixed or Contingent. BOUTIN's fees are fixed insofar as
14 monies exist by way of Receivership Assets from which to pay such fees. Payment of such fees,
15 however, is subject to Court approval.

16 (g) Time Limitations Imposed by the Client or Other Circumstances. The time
17 requirements during the period covered by this Application have not been extreme.

18 (h) The Amount Involved and the Results Obtained. This case currently involves 32
19 active insurance policies having a death benefit of close to \$30 million. In excess of 800
20 investors invested more than \$31 million to purchase fractionalized interests in the insurance
21 policies.

22 Since his appointment, the Receiver has closed all known bank accounts and has taken
23 possession of all known books and records. He has obtained accurate, current information
24 regarding each policy and has been able to pay premiums on the policies on a current basis. The
25 Receiver has also arranged for a \$4.5 million line of credit to be utilized to pay premiums and
26 other administrative expenses. A website is maintained by the Receiver so as to update the
27 investors. Claim forms have been approved and mailed to all known investors. To date, 811
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1 claims have been received, with 718 claims totaling \$26,099,366.26 determined to be allowed by
2 this Court. During this period, the Receiver has sought and obtained Court approval of
3 procedures for implementing final sale for the receivership estate.

4 (i) The Experience, Reputation and Ability of the Attorneys. BOUTIN has several
5 attorneys who work exclusively in the practice of civil trial law. The practice of those attorneys
6 includes the representation of parties before this Court. The reputation of BOUTIN's attorneys
7 is recognized and respected in this community.

8 (j) The Undesirability of the Case. The representation of the Receiver incident to
9 this case has not been undesirable.

10 (k) The Nature and Length of the Professional Relationship with the Client.
11 BOUTIN did not represent the Receiver in these proceedings prior to being retained in these
12 proceedings.

13 (l) Awards in Similar Cases. BOUTIN believes that the fees requested in this case
14 are less than or equal to those which have been awarded in similar cases in this District.

15 WHEREFORE, the Receiver respectfully requests that the Court allow the requested
16 compensation for professional services and expenses rendered by BOUTIN and authorize the
17 Receiver to pay the 10% fee holdback of \$154.05, as per itemization in Exhibit "A" attached
18 hereto and for such other and further relief, general or special, at law or in equity, to which the
19 Receiver and BOUTIN may show themselves justly entitled.

20 BOUTIN JONES INC.

21 Dated: October 2, 2014

22 By: /s/ Maralee Eriksen
23 Maralee Eriksen
24 Attorneys for Receiver of Defendants
25 Secure Investment Services, Inc.,
26 American Financial Services, Inc., and
27 Lyndon Group, Inc.
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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of October, 2014 a copy of this Application was served on all interested parties through the Court's electronic filing system. In addition, a copy of this Application was served on the following other persons by First Class U.S. Mail:

Bazzle John Wilson
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/s/ Maralee Eriksen

Maralee Eriksen